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Supreme Court of the United States

OCTOBER TERM, 1961

NO. 468

In the Matter of the Application of

STEVEN I. ENGEL, DANIEL LICHTENSTEIN, MONROE LERNER, LENORE LYONS and LAWRENCE ROTH,

Petitioners-Appellants,

—against—

WILLIAM J. VITALE, JR., PHILIP J. FREED, MARY HARTE, ANNE BIRCH and RICHARD SAUNDERS, constituting the Board of Education of Union Free School District Number Nine, New Hyde Park, New York,

Respondents-Respondents,

directing them to discontinue a certain school practice,

—and—

HENRY HOLLENBERG, ROSE LEVINE, MARTIN ABRAMS, HELEN SWANSON, WALTER F. GIBB, JANE EHLEN, RALPH B. WEBB, VIRGINIA ZIMMERMAN, VIRGINIA DAVIS, VIOLET S. COX, EVELYN KOSTER, IRENE O'ROURKE, ROSE MARIE PETELENZ, DANIEL J. REEHIL, THOMAS DELA. EY and EDWARD L. MacFARLANE,

Intervenors-Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF NEW YORK

JOINT BRIEF OF RESPONDENTS AND INTERVENORS-RESPONDENTS OPPOSING CERTIORARI

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Dated: New York, New York
November 21, 1961

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JOINT BRIEF OF RESPONDENTS AND INTERVENORS-RESPONDENTS OPPOSING CERTIORARI

Preliminary Statement

This Brief is submitted jointly on behalf of respondents and intervenors-respondents in opposition to the granting of the writ sought herein. Their opposition is based on two grounds:

(a) the judgment of the Court of Appeals of New York fully accords with the First and Fourteenth Amendments to the Federal Constitution, as interpreted by this Court in *Zorach* v. *Clauson*, 343 U.S. 306, and, under the standards promulgated by this Court for review on writ of certiorari, presents no reviewable federal question of substance;

(b) petitioners have improperly invoked the jurisdiction of this Court and, since their time to appeal or to petition for writ of certiorari on proper jurisdictional grounds has expired, no review by this Court may be had.

Jurisdiction of This Court

The judgment to which the Petition herein is directed was rendered on July 7, 1961 by the Court of Appeals of New York (see Remittitur annexed to Petition at p. 104). That judgment sustained the validity, as against attack on the ground of repugnance to the First and Fourteenth Amendments to the Constitution of the United States, of a resolution adopted July 8, 1958 by respondent Board of Education directing that the "Regents' Prayer" be "instituted as a daily procedure to follow the salute to the flag." * The jurisdiction of this Court to review that judgment by writ of certiorari is specifically invoked under 28

* The text of this resolution is set forth at pages 31-32 of Appendix A to this Brief.

U.S.C. §1254. Petitioners' time to seek review in this Court expired ninety days after entry of judgment in the New York Court of Appeals, or on October 5, 1961 (28 U.S.C. §2101). *Department of Banking* v. *Pink*, 317 U.S. 264, 267-68. No notice of appeal has been filed and no application has been made by petitioners to extend their time for filing a proper petition for writ of certiorari.

Questions Presented

1. Do the First and Fourteenth Amendments to the Federal Constitution compel the total abolition of every form of prayer on a voluntary basis in all the public school systems of this country?

2. More specifically, do the First and Fourteenth Amendments compel the total abolition of a brief non-denominational prayer composed by the Board of Regents of the University of the State of New York in language taken from the preambles of various state constitutions, in accordance with an historic tradition of public prayer; and which was recommended by the Regents for voluntary recital by public school pupils in conjunction with the pledge of allegiance to the flag in an attempt to provide in the public schools of New York a simple recognition of this country's moral and spiritual heritage, where there is no showing of any compulsion upon any pupil to participate, and when any pupil whose parents object is excused from participation?

3. Does not the fact that the resolution of respondent School Board was challenged below as repugnant to the United States Constitution and was held valid by the highest court of New York, require that any review in this Court be had solely by appeal under 28 U.S.C. §1257(2), and therefore necessitate dismissal or denial of the Petition

herein and, in the event that this Court finds that review is not available solely on appeal under 28 U.S.C. §1257(2), does not the fact that petitioners have invoked the jurisdiction of this Court under 28 U.S.C. §1254, rather than 28 U.S.C. §1257(3), require denial or dismissal of the Petition?

Constitutional and Statutory Provisions Involved

The texts of the following constitutional and statutory provisions involved herein are set forth in Appendix A to this Brief. The text of the Regents' Prayer is set forth at p. 5 of this Brief.

(a) United States Constitution, First Amendment

(b) United States Constitution, Fourteenth Amendment, Section 1

(c) United States Code, Title 28, Section 1254

(d) United States Code, Title 28, Section 1257

(e) United States Code, Title 28, Section 2101(c)

(f) United States Code, Title 28, Section 2103

(g) Resolution of Respondent Board of Education of Union Free School District Number 9, New Hyde Park, New York dated July 8, 1958.

Statement of the Case

A. The Background of the Regents' Prayer

The Regents' Prayer, which petitioners claim "may endanger the entire constitutional basis of our religious liberty" (Petition, p. 16) is a brief and simple acknowledgment of the existence of a Supreme Being. It is twenty-two words in length, requires approximately twelve seconds for recital, and reads:

> "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country" (R. 28).*

It was composed in 1951 by the Board of Regents of the University of the State of New York which is, and since 1784 has been, the highest educational authority in the State (N.Y. Const. Art. 5, §4; Art. 11, §2) and whose high standing and reputation are acknowledged throughout the educational world. Its language was borrowed from provisions appearing in the Constitutions of nearly all of the states of the Union. See Appendix D at p. 46.

The Prayer was recommended by the Regents as a means of:

> "* * * stressing the moral and spiritual heritage which is America's, the trust which our pioneering ancestors placed in Almighty God, their gratitude to Him from Whom they freely and frequently acknowledged came their blessings and their freedom and their abiding belief in the free way of life and in the universal brotherhood of man based upon their acknowledgment of the fatherhood of their Creator, Almighty God, Whom they loved and reverenced in diverse ways." (Regents' Statement on Moral and Spiritual Training in the Schools) (R. 28-29)**

In this Statement the Regents declared:

> "Belief in and dependence upon Almighty God was the very cornerstone upon which our Founding Fathers builded.
>
> Our State Constitution opens with these solemn words: 'We, the People of the State of New York,

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* Except as otherwise identified, references are to pages of the Papers on Appeal and Supplemental Papers on Appeal comprising the record below.

** The texts of this Statement and of the subsequent "Recommendation for School Programs on America's Moral and Spiritual Heritage" are set forth at pp. 33-43 of Appendix B to this Brief.

grateful to Almighty God for our Freedom, in order to secure its blessings, do establish this Constitution.'

We are convinced that this fundamental belief and dependence of the American—always a religious—people is the best security against the dangers of these difficult days. In our opinion, the securing of the peace and safety of our country and our State against such dangers points to the essentiality of teaching our children, as set forth in the Declaration of Independence, that Almighty God is their Creator, and that by Him they have been endowed with their inalienable rights of life, liberty, and the pursuit of happiness" (R. 28).

This awareness of the necessity for recognition in our public educational system of the moral and spiritual values to which the American people have always subscribed was reaffirmed by the Regents in 1955 in their unanimous "Recommendation for School Programs on America's Moral and Spiritual Heritage" (R. 30-39).

"'All men are created equal' is the basic principle of the Brotherhood of Man, and 'endowed by their Creator with life, liberty and the pursuit of happiness' is the recognition of the Fatherhood of God, and that these most precious rights come from the Creator and not from the kings, princes or other men. The proposition that 'government derives its just powers from the consent of the governed' is a recognition of the dignity, worth and sovereignty of each individual under God and of the concept of the individual as a sovereign citizen who, with his fellow citizens, is master of the state they have created and not its servant.

The American people have always been a religious people, believing in God each in accordance with his own conscience. As our Supreme Court well stated, 'We are a religious people whose institutions presuppose a Supreme Being'" (R. 33-34).

After recommending intensive study of the fundamental documents of our Republic, the Regents declared:

> "The same will give to the student an understanding and appreciation of his role as an individual endowed by his Creator with inalienable rights and as a member of a group similarly endowed; of respect for others, particularly parents and teachers, of devotion to freedom and of reverence for Almighty God" (R. 38).

Thus the Regents have sought to impart to the future citizens of the State a recognition of the moral and spiritual values which have been recognized as the basis of our free society since colonial days. The Regents' Prayer, an integral part of that program, serves as a simple reminder that Americans trust in God, as the Pledge of Allegiance serves as a simple reminder of our obligations to our "one nation under God".

It should be emphasized that, in recommending this program, the Regents were not unmindful of the First and Fourteenth Amendments to the United States Constitution, for they specifically cautioned against any injection of sectarianism or formal religion into the public school:

> "In putting such recommendations into effect teachers will be mindful always of the fundamental American doctrine of the separation of church and state, and careful at all times to avoid any and all sectarianism or religious instruction which advocates, teaches or prefers any religious creed. Formal religion is not to be injected into the public school. It is a matter for the church and the home, for the religious leaders and the parents of each child" (R. 32).

There is no evidence in this case that any pupil in the schools operated by respondent School Board has been subjected in the schools to any sectarian or other formal

religious teaching. Undisguised, petitioners' attack is against any voluntary public recognition of belief and trust in God in an effort to obliterate from our public schools any recognition—even on a voluntary basis—of the existence of a Divine Being. In their briefs and arguments below and in their Petition to this Court they attack not merely the Regents' Prayer but any form of prayer whatsoever. They deny to every public school the right to suggest to any child that God is our Creator and the Author of our liberties or to encourage any public expression of gratitude to Him for those liberties, regardless of the wishes of the child or his parents and regardless of the historical and constitutional tradition of this nation.

B. The Nature and Background of This Litigation

On July 8, 1958, respondent School Board, acting in accordance with the Regents' recommendation, adopted a resolution directing that the Regents' Prayer be recited in the schools of the District as a daily procedure to follow the salute to the flag (R. 26, 40, 65-66). On January 22, 1959, petitioners, as interested parents and as taxpayers of the District, commenced a special proceeding under Article 78 of the New York Civil Practice Act* to require the Board to discontinue or cause to be discontinued the recitation of the Prayer in the public schools of the District (R. 9-18).

The sixteen intervenors-respondents are citizens and taxpayers residing within the geographical confines of the School District and are parents of thirty-seven children actually attending the seven district public schools (R. 54).

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* Article 78, entitled "Proceeding against a body or officer", provides a summary procedure for reviewing the acts of public officials and others, codifying and replacing the common-law remedies of mandamus, prohibition and certiorari.

They include members of the Hebrew, Protestant and Catholic faiths, and one (Evelyn Koster) who is a member of no organized church. They were permitted to intervene below on behalf of themselves and other parents in the District, in support of the position of respondent School Board.

It must be emphasized that there is no allegation in the petition for relief under Article 78 (R. 11-18) that any child of any petitioner or any other child in the district was ever compelled, or even urged, to join in the prayer or was ever disciplined or threatened with disciplinary action for failing to do so. Any child whose parents so desire is either excused from the classroom during the recitation of the prayer or permitted to remain silent while the prayer is recited by others (R. 152-54). The answer of respondent School Board (R. 19) and the affidavit of its President (R. 26-27), the opinions below (R. 66) and the affidavit of the School Board President read in support of the Board's motion for a final order of dismissal (R. 151-54) make it plain that no such compulsion was contemplated, or has ever occurred. Petitioners make no claim to the contrary; and throughout their pleadings, as well as in their briefs, their position is clear that the mere institution of the Regents' Prayer—or for that matter any prayer—in the public school system is incurably unconstitutional under any and all circumstances, regardless of the absence of coercion. This position is clearly set forth in the affidavit submitted on behalf of petitioners in opposition to the motion for entry of a final order below (R. 156-57).

Thus, the issue presented in this case is solely one of law and has been so treated by all courts below: Does the Federal Constitution require the abolition of the non-compulsory recital of this non-denominational prayer?

The New York Supreme Court, Special Term (Meyer, J.), in a scholarly and well reasoned opinion, held that the

recognition of prayer is an integral part of our national heritage and that the Establishment Clause cannot have been intended to outlaw the practice in schools any more than in other areas of our public life; that prayer in the schools has been a traditional and accepted practice, particularly at the times of the adoption of the First and Fourteenth Amendments; that these Amendments were not intended to outlaw the practice of public prayer in or out of the schools; that the Regents' Prayer, as a brief, voluntary, non-sectarian acknowledgment of God's existence, was in full accord with this tradition; and, as such, it did not violate either the Federal or State Constitutions (R. 50-116; 18 Misc. 2d 659; opinion annexed to Petition at p. 23).

The order entered upon this determination in Supreme Court, Nassau County (to the extent relevant to appellate proceedings) denied the petition (and accordingly refused to order the discontinuance of the Regents' Prayer), denied petitioners' demand for a jury trial, and directed that the matter be remanded to the respondent Board of Education for proceedings not inconsistent with the Court's opinion (R. 6-8). That opinion in substance directed the Board to adopt certain specific safeguards, confirming its existing practice, to ensure that the recital of the Regents' Prayer was a voluntary matter, to be observed or not at the election of the child or his parents (R. 8, 105-09).

On appeal to the Appellate Division, Second Department, this order was affirmed *per curiam*, one Justice concurring in part and dissenting in part (R. 124-25; 11 App. Div. 2d 340; opinion annexed to Petition at p. 75). A final order was then entered in Supreme Court, Nassau County, dismissing the proceeding on the merits on the ground that respondent School Board had complied with the directions of Special Term, as affirmed (R. 148-49). Petitioners appealed to the Court of Appeals of New York from this final order and, pursuant to Sections 588(2) and 590(a) of the

New York Civil Practice Act, brought up for review in that Court the interlocutory order of the Appellate Division affirming the prior order of Special Term, which determined the merits of the constitutional issues raised by petitioners (R. 145-46).

The Court of Appeals, by a 5 to 2 vote, affirmed the final order and, accordingly, found no error in either the interlocutory or the final order brought up for review. 10 N. Y. 2d 174. That Court first held that there were:

> "• • • adequate provisions to ensure that no pupil need take part in or be present during the act of reverence so any question of 'compulsion' or 'free exercise' is out of the case (see Zorach v. Clauson, 343 U.S. 306) (88)." •

The Court of Appeals further ruled that the recitation of the Prayer was neither "religious education" nor "the practice of or establishment of religion in any reasonable meaning of those phrases" (89), but was in harmony with a "universally accepted tradition" of public prayer in American life. In the majority opinion, Chief Judge Desmond stated:

> "The 'Regents' prayer' is an acknowledgment of our dependence upon Almighty God and a petition for the bestowal of His blessings. It includes an acknowledgment of the existence of a Supreme Being just as does the Declaration of Independence and the Constitutions of each of the 50 States of the Union, including our own. In construing even a Constitution some attention must be paid to the obvious intent of those who drafted it and adopted it (*Matter of Carey* v. *Morton*, 297 N.Y. 361). That the First Amendment was ever intended to forbid as an 'establishment of religion' a simple declara-

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• References to the opinions of the Court of Appeals are to the pages of Appendix A to the Petition herein, where those opinions are reprinted.

tion of belief in God is so contrary to history as to be impossible of acceptance (89).

• • • • •

It is an indisputable and historically provable fact that belief and trust in a Creator has always been regarded as an integral and inseparable part of the fabric of our fundamental institutions. It is not a matter of majority power or minority protection. Belief in a Supreme Being is as essential and permanent a feature of the American governmental system as is freedom of worship, equality under the law and due process of law. Like them it is an American absolute, an application of the natural law beliefs on which the Republic was founded and which in turn presupposes an Omnipotent Being" (91).

Judge Froessel, in his concurring opinion, agreed that the recital of the Regents' Prayer fell within the scope of this Court's decision in *Zorach* v. *Clauson*, 343 U. S. 306, rather than that of *McCollum* v. *Board of Education*, 333 U. S. 203, stating:

"The narrow question presented is: Do the Federal and State Constitutions prohibit the recitation by children in our public schools of the 22 words acknowledging dependence upon Almighty God, and invoking His blessing upon them, their parents and teachers, and upon our country? To say that they do seems to me to stretch the so-called separation of church and State doctrine beyond reason (91).

• • • • •

One may earnestly believe in God, without being attached to any particular religion or church. Hence a rule permitting public school children, willing to do so, to acknowledge their dependence upon Him, and to invoke His blessings, can hardly be called a 'law respecting an establishment of religion' or 'prohibiting the free exercise thereof' in transgression of the First Amendment which in nowise prohibits the recognition of God, or laws respecting such recognition.

The challenged recitation follows the pledge of allegiance, which itself refers to God. School children are permitted to sing 'America', the fourth stanza of which is indeed a prayer, invoking the protection of 'God', 'Author of Liberty'. The preamble to our State Constitution, which is taught in our public schools, provides: 'We the People of the State of New York, grateful to Almighty God for our Freedom'. Virtually every State Constitution in the United States, as well as the Declaration of Independence, contains similar references. To say that such references, and others of like nature employed in the executive, legislative and judicial branches of our Government (*see Zorach* v. *Clauson*, 343 U.S. 306, at pp. 312-313), unrelated to any particular religion or church, may be sanctioned by public officials everywhere but in the public school room defies understanding (92).

• • • • •

Here no partiality is shown, nor are classrooms being turned over to religious instructors as in *McCollum* v. *Board of Educ.* (333 U.S. 203). Any effort of a particular group to promote its own beliefs, doctrines, tenets and dogma must be carried on outside the public school, and any law to the contrary would violate the First Amendment. (*McCollum* v. *Board of Educ., supra.*)

As we see it, then, the challenged recitation was rightly upheld. It is not compulsory, is clearly nonsectarian in language, and neither directly nor indirectly even suggests belief in any form of organized or established religion. It permits each child to express gratitude to God and to invoke His blessing, to be steadfast in the faith of his acceptance if he has one; it compels no one, directly or indirectly, to do anything, if that be his or his parents' wish. All remain free, and thus we do not show preference as between 'those who believe in no religion' and 'those who do believe' (*Zorach* v. *Clauson, supra,* p. 314)" (93).

Judgment on the remittitur was entered in the office of the Clerk of Nassau County on October 23, 1961. A copy of this judgment is annexed as Appendix C, *infra*, at p. 44.

ARGUMENT

POINT I

The decision below, sustaining the constitutionality of the Regents' Prayer, is in harmony with prior rulings of this Court. No review on writ of certiorari is warranted.

Rule 19 of the Rules of this Court provides, so far as here pertinent:

> "A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:
>
> (a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court."

While this Court has never specifically ruled on the validity of the Regents' Prayer or any similar public utterance, there are no "special or important reasons" for granting review in this case because:

(1) the voluntary recital of a non-sectarian prayer does not differ in essential principle from the voluntary recital of civic or organic prayers in common use in our schools and in other areas of public life since before the adoption of the Federal Constitution;

(2) such a prayer merely implements, for those who voluntarily recite it, the recognition given by this Court to the fact that " • • • We are a religious people whose institutions presuppose a Supreme Being";

(3) the validity of the Regents' Prayer is established by the principles enunciated by this Court in *Zorach* v. *Clauson*, 343 U.S. 306; *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624; and *Church of the Holy Trinity* v. *United States*, 143 U.S. 457.

Public utterances of belief in a Supreme Being have long been common in our society. While it would be improper, in this brief in opposition to the Petition, to include a full historical review, some examples may suffice. On June 12, 1775, the Continental Congress proclaimed a day of fasting and prayer, stating:

> "As the great Governor of the World, by his supreme and universal providence, not only conducts the course of nature with unerring wisdom and rectitude, but frequently influences the minds of men to serve the wise and gracious purposes of his providential government; and it being, at all times our indispensable duty devoutly to acknowledge his superintending providence, especially in times of impending danger and public calamity, to reverence and adore his immutable justice as well as to implore His merciful interposition for our deliverance." 2 Journals of the Continental Congress 87.

Similar days of thanksgiving were proclaimed in 1777, 1782 after the victory of the Continental Army, and again in 1783 after the signing of the peace treaty with Great Britain. On the very day that the First Congress approved the First Amendment (September 24, 1789) it resolved:

> "That a joint committee of both Houses be directed to wait upon the President of the United States to request that he would recommend to the people of the United States a day of public thanksgiving and prayer, to be observed by acknowledging, with grateful hearts, the many signal favors of the Almighty God, especially by affording them an opportunity

> peaceably to establish a Constitution of government for their safety and happiness." 1 Annals of Cong. 914-15; *cf.* also *id.* at 90.

The Declaration of Independence, the fountainhead of our national values and a compulsory subject of study in all New York schools (Education Law §3204(3)(2)), asserts that all men:

> "are endowed by their Creator with certain inalienable rights."

and contains at least three other distinct affirmations of belief in God.

The constitutions of New York and of virtually all sister states contain preambles expressing recognition of God's presence and gratitude to Him for our freedom and liberties.* The content of the Regents' Prayer here attacked is merely a paraphrase of some of these constitutional provisions. The phrase used in that Prayer:

"We acknowledge our dependence on Thee" (R. 28) is a paraphrase of the language appearing in the Constitutions of North Carolina and Iowa. The phrase "we beg Thy blessings" is a paraphrase of the invocation for God's blessing and guidance appearing in the Constitutions of Alabama, Illinois, New Jersey and South Carolina.

In very recent years, Congress has repeatedly reaffirmed our national public policy in respect to civic or organic prayer. In 1952 it directed the President to set aside by proclamation a National Day of Prayer (36 U.S.C. §185). In 1954 Congress added the words "under God" to the prescribed Pledge of Allegiance to the Flag (36 U.S.C. §172). The House Report on the basis of which this addi-

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* See Appendix D to this Brief (p. 46) where these preambles are set forth.

tion was made is reprinted as Appendix E to this Brief, *infra*, at p. 58. It is a cogent statement of the principles for which we contend. In 1955 Congress directed that the words of our national motto "In God We Trust" should appear on all of our coins and paper currency (31 U.S.C. §324a). In reality, the Regents' Prayer says no more than does our national motto (36 U.S.C. §186).

These are not meaningless gestures which prove nothing. On the contrary, they exemplify a practice which has existed in our public life since before the adoption of the Federal Constitution and prove that the practice of public prayer is an integral part of our national heritage.

Similarly, Mr. Justice Meyer at Special Term was on sound historical ground when he held that prayer or Bible-reading in public schools was an established and accepted practice at the time of the adoption of the Fourteenth Amendment (R. 73-78) and that there was no indication in the legislative history of either the First or Fourteenth Amendments that all mention of God was to be stricken from our public life, of which our public schools are a part (R. 71-73, 78-80).

Such a meaning would be completely inconsistent with contemporaneous legislation authorizing the President to proclaim a day of public thanksgiving and prayer (1 Annals of Cong. 914-15); appointing chaplains for each House of Congress (2 Annals of Cong. 1519) and for the armed services (1 Stat. 223, 242, 350); and with the Northwest Ordinance of 1787 (adopted in the very year in which the Constitution was drafted, and reenacted verbatim by the First Congress) which provided in part:

> "Religion, morality and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall be forever encouraged." 1 Stat. 50-52.

It is in the light of the history of general belief in a Supreme Being that this Court has declared, in *Zorach* v. *Clauson*, 343 U.S. 306, 312-14:

> "The First Amendment, however, does not say that in every and all respects there shall be a separation of Church and State. Rather, it studiously defines the manner, the specific ways, in which there shall be no concert or union or dependency one on the other. That is the common sense of the matter. Otherwise the state and religion would be aliens to each other—hostile, suspicious, and even unfriendly. Churches could not be required to pay even property taxes. Municipalities would not be permitted to render police or fire protection to religious groups. Policemen who helped parishioners into their places of worship would violate the Constitution. Prayers in our legislative halls; the appeals to the Almighty in the messages of the Chief Executive; the proclamations making Thanksgiving Day a holiday; 'so help me God', in our courtroom oaths—these and all other references to the Almighty that run through our laws, our public rituals, our ceremonies would be flouting the First Amendment. A fastidious atheist or agnostic could even object to the supplication with which the Court opens each session: 'God save the United States and this Honorable Court.'
>
> • • • • •
>
> We are a religious people whose institutions presuppose a Supreme Being. We guarantee the freedom to worship as one chooses. We make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary. We sponsor an attitude on the part of government that shows no partiality to any one group and that lets each flourish according to the zeal of its adherents and the appeal of its dogma. When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our tradition. For it then respects the

> religious nature of our people and accommodates the public service to their spiritual needs."

In so doing, this Court recognized as an historical fact and a present reality the vital force of belief in a Supreme Being as an essential element of our national heritage and existence and followed its decision in *Church of the Holy Trinity* v. *United States*, 143 U.S. 457, where it reviewed the historically religious nature of American institutions from the first settlements through the establishment of the Union and concluded:

> "There is no dissonance in these declarations. There is a universal language pervading them all, having one meaning; they affirm and reaffirm that this is a religious nation. These are not individual sayings, declarations of private persons: they are organic utterances; they speak the voice of the entire people.
>
> • • • • •
>
> If we pass beyond these matters to a view of American life as expressed by its laws, its business, its customs and its society, we find everywhere a clear recognition of the same truth. Among other matters note the following: The form of oath universally prevailing, concluding with an appeal to the Almighty; the custom of opening sessions of all deliberative bodies and most conventions with prayer; the prefatory words of all wills, 'In the name of God, amen;'" 143 U.S. at 470-71.

The Regents' Prayer was recommended in the light of these basic facts of our history and in accordance with the recognition by this Court in *Church of the Holy Trinity* v. *United States*, *supra*, and in *Zorach* v. *Clauson*, *supra*, that "[W]e are a religious people whose institutions presuppose a Supreme Being." It is that respect for the religious nature of our people and that accommodation to

their spiritual needs which the Regents and respondent School Board have here sought conscientiously to accomplish.

Petitioners contend that, because the Regents' Prayer takes place on school premises, its constitutional status must be determined by *McCollum* v. *Board of Education*, 333 U.S. 203. It is submitted that this argument is incorrect. The *McCollum* decision held unconstitutional a program of formal sectarian religious education carried on during regular school hours in the classrooms of the public schools of the City of Champaign, Illinois. That program involved these features:

1. Formal religious instruction in the public schools was the essence of the program.

2. Pupils were segregated for instruction by the school authorities according to their several faiths.

3. School officials supervised and approved the religious teachers.

4. Pupils were solicited for religious instruction on school premises, and registration cards were distributed by the school.

5. Non-attending pupils were isolated or removed to another room.

It is obvious that the program of instruction found unconstitutional in the *McCollum* case differs markedly from the Regents' Prayer at issue in this case. In *McCollum* the core of the program was religious instruction to pupils grouped according to their sectarian preferences or lack of them. To the contrary, the Regents' Prayer, as found at Special Term (R. 112-13) and as stated by Mr. Justice Beldock in the Appellate Division (R. 136) and by Chief Judge Desmond in the opinion of the Court of Appeals (89), is not sectarian instruction of any type but rather

constitutes a simple and voluntary affirmation of belief in and dependence on a Supreme Being in full accord with the heritage and traditions of our people. Thus, the holding of the *McCollum* case is clearly inapplicable to the case at bar.

The weakness of petitioners' position is shown by the decision of this Court in *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624.

There this Court struck down as unconstitutional a regulation of the State Board of Education which *required* all teachers and pupils in public schools to participate daily in the customary pledge of allegiance to the flag. The complaining parties were Jehovah's Witnesses, who regarded the pledge as an act of idolatry and insisted that compulsory participation in it was contrary to their religious convictions. Under the applicable regulations and statutes, failure to participate in the pledge was declared to be insubordination, dealt with by expulsion. The expelled child could be proceeded against as a delinquent, and his parents or guardians were liable to prosecution (319 U.S. at 629).

The essence of this Court's decision lay in these drastic compulsory factors. This was made plain not only throughout this Court's opinion but also by the opinion of the district court, whose decision was affirmed. That opinion (*Barnette* v. *West Virginia State Board of Education*, 47 F. Supp. 251, 255) concluded:

> "* * * we are clearly of opinion that the regulation of the Board *requiring* that school children salute the flag is void *in so far as it applies to children having conscientious scruples* against giving such salute and that, *as to them*, its enforcement should be enjoined. Injunctive order will issue accordingly" (emphasis supplied).

The injunctive order thus granted, and affirmed on appeal, enjoined the defendants:

> "* * * from requiring the children of the petitioners, or any other children having religious scruples against such action, to salute the flag of the United States, or any other flag, or from expelling such children from school for failure to salute it" (p. 46 of Supreme Court Record in *Barnette* case, No. 591, October Term 1942).

This Court did not, however, rule that the pledge of allegiance should be outlawed for *all* pupils because of the conscientious objections of the minority. Yet that is precisely what petitioners now ask this Court to do with respect to the Regents' Prayer. Respondents and intervenors-respondents have no objection whatever to the entry of an order similar to that entered in the *Barnette* case. Indeed, we believe that the order sought to be reviewed here is indistinguishable from the *Barnette* order in that both fully protect the right of dissenters to abstain from practices which they find objectionable. However, such an order is not what petitioners seek. They ask that the Regents' Prayer—or indeed any prayer—be completely outlawed in our public schools for everyone and under all circumstances. Such a determination would require not only that the Regents' Prayer be discontinued, but also that all schools cease the voluntary recitation of the pledge of allegiance, which, as amended by 36 U.S.C. §172, contains the words "under God". In view of the expressed position of Jehovah's Witnesses that *any* statement of allegiance to a temporal authority is idolatry, the pledge of allegiance, even in its unamended form, could not constitutionally stand, consistent with the views which petitioners ask this Court to accept.

Certainly such results are neither necessary nor desirable as a means of protecting freedom of conscience under the First Amendment. In the words of Mr. Justice Frankfurter's dissent in the *Barnette* case (319 U.S. at 662), any such result would mean:

> "• • • that the consciences of a minority are more sacred and more enshrined in the Constitution than the consciences of a majority."

Indeed, the results for which petitioners contend would, in the name of religious liberty, give to any minority group a veto power over the rights of all others. We reiterate that no one here seeks in any way to attack the beliefs or the rights of petitioners or their children. No one seeks to force petitioners' children to utter a single word, or to do a single act, which is contrary to law or to their own convictions. But petitioners have no right, we insist, to warp our educational system so as to force all others to conform to their views, or to deny to others the right to participate in what they regard as an integral part of our national heritage.

It is therefore submitted that the constitutionality of the Regents' Prayer is properly determined by reference to the principles enunciated in *Zorach* v. *Clauson, supra; Church of the Holy Trinity* v. *United States, supra;* and *West Virginia State Board of Education* v. *Barnette, supra,* and, tested under those principles, there is no substantial federal question warranting review by this Court.

POINT II

Petitioners' failure to invoke properly the jurisdiction of this Court bars any review by this Court.

Petitioners (p. 4 of Petition) have incorrectly invoked the jurisdiction of this Court under 28 U.S.C. §1254 which provides in pertinent part:

> "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree."

It is apparent that this section relates only to judgments of *United States* Courts of Appeals and that any jurisdictional basis for review either on appeal or by writ of certiorari of a judgment of a state court must be based on 28 U.S.C. §1257. That section provides:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.
>
> (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the

> United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

It is the position of respondents and intervenors-respondents that, under the express provisions of this section, this case can only be reviewed in this Court on appeal pursuant to subsection (2); and that any petition for writ of certiorari under subsection (3) is improper.

There is no doubt that petitioners "drew into question" in the New York courts the validity of the resolution of the respondent School Board dated July 8, 1958 on the ground that it was repugnant to the Constitution of the United States. It must also be conceded that the final determination of the Court of Appeals of New York, the highest state court in which a decision could be had, was in favor of the validity of that resolution. That resolution is, for purposes of 28 U.S.C. §1257, a state "statute" inasmuch as it is an enactment "to which a state gives the force of law". See *Hamilton* v. *Regents of the University of California*, 293 U.S. 245; *King Mfg. Co.* v. *Augusta*, 277 U.S. 100; *Williams* v. *Bruffy*, 96 U.S. 176; *cf. McCollum* v. *Board of Education*, 333 U.S. 203.

When a case has been decided by a state court of last resort in the manner specified in 28 U.S.C. §1257(2), it is submitted that review may be had only under that subsection; and that review by writ of certiorari under 28 U.S.C. §1257(3) is available only where the specific requirements of the prior subsection cannot be satisfied. Any other construction would render meaningless the basic distinction between appeal and certiorari in the statutory appellate jurisdiction of the Court.

Congress has provided that an *appeal* improvidently taken may be regarded and acted on as a petition for writ of certiorari, see 28 U.S.C. §2103. Here petitioners have proceeded on the basis of certiorari and there is no similar statutory saving provision with respect to erroneously filed petitions for writ of certiorari. Petitioners have not filed any notice of appeal within the prescribed period, see 28 U.S.C. §2101(c), and their time to file such a notice may not be extended. It is therefore submitted that the Petition herein should be dismissed on the ground that review lies only by appeal and that no notice of appeal has been timely filed.

Even assuming *arguendo* that this construction of 28 U.S.C. §1257 is incorrect, petitioners have invoked the jurisdiction of this Court under 28 U.S.C. §1254—a patently unavailable source of jurisdiction. They have therefore failed to seek review properly within the time allowed for filing such petitions. Not having obtained any extension of time to file a proper petition, review in this Court on certiorari is foreclosed.

CONCLUSION

Because the federal question here presented was properly decided by the New York courts in accordance with long-standing tradition and this Court's prior decisions, and because petitioners have failed to invoke the jurisdiction of this Court properly within the time allowed by law, the Petition should be denied.

Respectfully submitted,

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Dated: New York, New York
November 21, 1961

APPENDIX A

(a) United States Constitution, First Amendment

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

(b) United States Constitution, Fourteenth Amendment, Section 1

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

(c) United States Code, Title 28, Section 1254

"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented;

(3) By certification at any time by a court of appeals of any question of law in any civil or criminal

case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy."

(d) United States Code, Title 28, Section 1257

"Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

(e) United States Code, Title 28, Section 2101(c)

"Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days."

(f) United States Code, Title 28, Section 2103

"If an appeal to the Supreme Court is improvidently taken from the decision of the highest court of a State in a case where the proper mode of a review is by petition for certiorari, this alone shall not be ground for dismissal; but the papers whereon the appeal was taken shall be regarded and acted on as a petition for writ of certiorari and as if duly presented to the Supreme Court at the time the appeal was taken. Where in such a case there appears to be no reasonable ground for granting a petition for writ of certiorari it shall be competent for the Supreme Court to adjudge to the respondent reasonable damages for his delay, and single or double costs."

(g) Resolution of Respondent Board of Education of Union Free School District Number 9, New Hyde Park, New York, dated July 8, 1958

BOARD OF EDUCATION

Union Free School District No. 9
Town of North Hempstead
New Hyde Park, L. I., N. Y.

PIoneer 2-7800

Certified Extract From
Minutes of Board of Education,
Union Free School District No. Nine

of

Meeting of July 8, 1958.

• • • • •

'Mrs. Harte moved, seconded by Mr. Saunders, that the regents prayer be said daily in our schools. Motion carried by majority vote, Mr. Fried voted "nay". The Board of Education gave direction to the District Principal that this be instituted as a daily procedure to follow the Salute to the flag.'

• • • • •

I, Florence Alnwick, District Clerk of Union Free School District No. Nine, Do Hereby Certify that the foregoing is a true and correct copy of an extract from the minutes of a meeting of the Board of Education duly called and held on July eighth, nineteen hundred and fifty-eight, at which a quorum was present and acting throughout.

I Do Hereby Further Certify that said resolution has not been rescinded or revoked.

In witness whereof I have hereto set my hand under seal of District No. Nine, this date of February thirteenth, nineteen hundred and fifty-nine.

Florence Alnwick
Florence Alnwick
District Clerk

Seal of the
District

APPENDIX B

THE UNIVERSITY OF THE STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT
Albany

THE REGENTS STATEMENT ON MORAL AND SPIRITUAL TRAINING IN THE SCHOOLS

BELIEF IN and dependence upon Almighty God was the very cornerstone upon which our Founding Fathers builded.

Our State Constitution opens with these solemn words: "We, the People of the State of New York, grateful to Almighty God for our Freedom, in order to secure its blessings, do establish this Constitution."

We are convinced that this fundamental belief and dependence of the American—always a religious—people is the best security against the dangers of these difficult days. In our opinion, the securing of the peace and safety of our country and our State against such dangers points to the essentiality of teaching our children, as set forth in the Declaration of Independence, that Almighty God is their Creator, and that by Him they have been endowed with their inalienable rights of life, liberty, and the pursuit of happiness.

We believe that at the commencement of each school day the act of allegiance to the Flag might well be joined with this act of reverence to God: "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country."

We believe that the school day thus started might well include specific programs stressing the moral and spiritual heritage which is America's, the trust which our pioneering ancestors placed in Almighty God, their gratitude to Him

from Whom they freely and frequently acknowledged came their blessings and their freedom and their abiding belief in the free way of life and in the universal brotherhood of man based upon their acknowledgment of the fatherhood of their Creator, Almighty God, Whom they loved and reverenced in diverse ways.

We believe that thus constantly confronted with the basic truth of their existence and inspired by the example of their ancestors, our children will find all their studies brought into focus and accord, respect for lawful authority and obedience to law will be the natural concomitant of their growth, and each of them will be properly prepared to follow the faith of his or her father, as he or she receives the same at mother's knee, by father's side, and as such faith is expounded and strengthened for them by his or her religious leaders.

We believe that thus the school will fulfill its high function of supplementing the training of the home, ever intensifying in the child that love for God, for parents and for home which is the mark of true character training and the sure guarantee of a country's welfare.

We believe that such is the best way of insuring that this Government and our way of life shall not perish from the earth.

We believe that this Statement will be subscribed to by all men and women of good will, and we call upon all of them to aid in giving life to our program.

The foregoing statement of belief was unanimously adopted by the State Board of Regents at its regular meeting on November 30, 1951.

The REGENTS' RECOMMENDATIONS
for SCHOOL PROGRAMS on
AMERICA'S MORAL & SPIRITUAL
HERITAGE

THE REGENTS' RECOMMENDATIONS FOR SCHOOL PROGRAMS ON *AMERICA'S MORAL & SPIRITUAL HERITAGE*

Unanimously Adopted *by the* Regents
March 25, 1955

THE UNIVERSITY OF THE STATE OF NEW YORK
The State Education Department
Albany

1955

THE UNIVERSITY OF THE STATE OF NEW YORK

Regents of the University

WILLIAM J. WALLIN, A.M., LL.D., *Chancellor Emeritus*, Yonkers

JOHN P. MYERS, A.B., D.Sc., LL.D., D.Eng., *Chancellor*, Plattsburgh

EDWARD R. EASTMAN, LL.D., Litt.D., *Vice Chancellor*, Ithaca

WELLES V. MOOT, A.B., LL.B., LL.D., Buffalo

MRS. CAROLINE WERNER GANNETT, L.H.D., LL.D., Rochester

ROGER W. STRAUS, Litt.B., LL.D., L.H.D., D.H.L., New York

DOMINICK F. MAURILLO, A.B., M.D., LL.D., Brooklyn

JOHN F. BROSNAN, A.M., LL.B., J.D., LL.D., D.C.L., New York

JACOB L. HOLTZMANN, LL.B., LL.D., D.C.L., New York

EDGAR W. COUPER, A.B., LL.D., Binghamton

ALEXANDER J. ALLAN, JR., LL.D., Litt.D., Troy

THAD L. COLLUM, C.E., Syracuse

GEORGE L. HUBBELL, JR., A.B., LL.B, New York

AMERICA'S MORAL & SPIRITUAL HERITAGE

On November 30, 1951, the Regents issued their Statement on Moral and Spiritual Training in the Schools, which opened with these words: "Belief in and dependence upon Almighty God was the very cornerstone upon which our Founding Fathers builded."

In such Statement, the Regents expressed their convictions that such fundamental belief and dependence is the best security against the dangers of these difficult days and the adoption of their recommendations the best way of insuring that this Government and our way of life shall not perish from the earth.

Such Statement contemplated the issuance of a Supplemental Statement setting forth the Regents' recommendations for programs in the schools stressing the Moral and Spiritual Heritage of America. This is the Supplemental Statement.

In putting such recommendations into effect teachers will be mindful always of the fundamental American doctrine of the separation of church and state, and careful at all times to avoid any and all sectarianism or religious instruction which advocates, teaches or prefers any religious creed. Formal religion is not to be injected into the public school. It is a matter for the church and the home, for the religious leaders and the parents of each child.

FUNDAMENTAL BELIEFS

LIBERTY UNDER GOD • RESPECT FOR THE DIGNITY & RIGHTS OF EACH INDIVIDUAL • DEVOTION TO FREEDOM

The Brotherhood of Man under the Fatherhood of God

Our Founding Fathers set forth in the Declaration of Independence, with unequaled clarity and simplicity, the fundamental moral and spiritual ideals of this Nation:

> *We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. . . .*

"All men are created equal" is the basic principle of the Brotherhood of Man, and "endowed by their Creator with life, liberty and the pursuit of happiness" is the recognition of the Fatherhood of God, and that these most precious rights come from the Creator and not from the kings, princes or other men. The proposition that "government derives its just powers from the consent of the governed" is a recognition of the dignity, worth and sovereignty of each individual under God and of the concept of the individual as a sovereign citizen who, with his fellow citizens, is master of the state they have created and not its servant.

The American people have always been a religious people, believing in God each in accordance with his own conscience. As our Supreme Court well stated, "We are a religious people whose institutions presuppose a Supreme Being."

The Constitution of the State of New York opens with these solemn words: "We, the People of the State of

New York, grateful to Almighty God for our Freedom, in order to secure its blessings, do establish this Constitution."

The Great Seal of the United States has as its symbol for future generations an unfinished pyramid of thirteen steps, representing the thirteen colonies, which pyramid is placed under the eye of God, and the motto, "Annuit Coeptis," meaning "He Has Favored Our Undertaking." This motto is repeated on every dollar bill, and our common coins and stamps carry the words, "In God We Trust."

Our Presidents and other great leaders again and again have recalled to our people their dependence upon Almighty God and their obligations to their fellow men, and the necessity of vigilantly protecting their liberty and their freedom. From the countless stream of quotations we cull the following:

At the Constitutional Convention in Philadelphia, Washington, as Chairman, set the spiritual tone for the sessions when he said: "Let us raise a standard to which the wise and honest can repair. The event is in the hand of God."

When the delegates at the Convention seemed hopelessly in disagreement, Benjamin Franklin, "imploring the assistance of Heaven," said, "I have lived, Sir, a long time, and the longer I live, the more convincing proofs I see of this truth—that God Governs in the affairs of men."

* * * * *

Washington, in taking his oath of office at his First Inaugural, said:

> *No people can be bound to acknowledge and adore the Invisible Hand which conducts the affairs of men more than those of the United States. Every step by which they have advanced to the character of an independent nation seems to have been distinguished by some token of providential agency; and in the important revolution just accomplished and in the system of their united government the tranquil deliber-*

ations and voluntary consent of so many distinct communities from which the event has resulted can not be compared with the means by which most governments have been established without some return of pious gratitude, along with an humble anticipation of the future blessings which the past seems to presage. . . .

• • • • •

Again, in his Farewell Address, Washington puts his convictions into these enduring words: "Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. . . . reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle."

• • • • •

Abraham Lincoln at Gettysburg said:

Four score and seven years ago our fathers brought forth on this continent, a new nation, conceived in Liberty, and dedicated to the proposition that all men are created equal.

He added that our soldiers fought and died there so "that this nation, under God, shall have a new birth of freedom—and that government of the people, by the people, for the people, shall not perish from the earth."

• • • • •

In another address these were his words:

Our reliance is in the love of liberty which God has planted in us. Our defense is in the spirit which prized liberty as the heritage of all men, in all lands everywhere. Destroy this spirit and you have planted the seeds of despotism at your own doors.

• • • • •

And in one of his last public speeches he uttered the sublime thought:

> *With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in, to bind up the nation's wounds, . . . to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations.*

• • • • •

In all these expressions Lincoln put into words the spiritual motivations for the sacrifices made not only by the heroes of Gettysburg and the other battles of the Civil War, but also of all Americans who have gone into battle, whether at Lexington, San Juan Hill, the Argonne Forest, Iwo Jima or Heartbreak Ridge.

• • • • •

Woodrow Wilson, in urging the American people to extend the principles of the Founders of this Republic into the realm of world leadership, said: "I summon all honest men, all patriotic, all forward-looking men to my side. God helping me, I will not fail them, if they will but counsel and sustain me!"

Finally, President Eisenhower brings our national moral and spiritual ideals down to date in these words: "Without God there could be no American form of government, nor an American way of life. . . . Thus the Founding Fathers saw it; and thus, with God's help, it will continue to be. . . . The path we travel is narrow and long—beset with many dangers. Each day we must ask that Almighty God will set and keep His protecting hand over us so that we may pass on to those who come after us the heritage of a free people, secure in their God-given right and in full control of a government dedicated to the preservation of those rights."

Throughout our entire history as a Nation, these Fundamental Beliefs have been our moral and spiritual ideals, our guiding star and our compass in time of storm and trouble. They should be a living part of the lives of all our children.

• • • • •

Devotion to Freedom

How well this is expressed in these challenging words of Thomas Jefferson: "I have sworn upon the altar of God, eternal hostility against every form of tyranny over the mind of man."

Our freedom of speech and worship and of the press, and to do all things which do not harm others, are highly important, but of even greater importance is the desire and will of the people to have them and to preserve them. The only way for freedom-loving people to secure the "blessings of liberty to ourselves and our posterity" is eternal vigilance through actions that are in response to the Moral Law. In the words of the Chancellor of the Board of Regents, opening our 1953 Convocation, "Freedom is not free—it must constantly be defended and cared for lest we lose it. That is the price we pay for it. We must reinterpret for our children the initiative, the courage and the faith of the Founding Fathers. We must root deeply in their hearts faith in the unimpeachable dignity of the individual and in the unquenchable spirit of free man."

Stressing Moral & Spiritual Values

We recommend:

First: That periods be set aside at frequent intervals during the school year which will be devoted to the intensive study of the foregoing fundamental and great American documents and pronouncements. The same will give to

the student an understanding and appreciation of his role as an individual endowed by his Creator with inalienable rights and as a member of a group similarly endowed; of respect for others, particularly parents and teachers, of devotion to freedom and of reverence for Almighty God. Thus, as we heretofore stated, "the school will fulfill its high function of supplementing the training of the home, ever intensifying in the child that love for God, for parents and for home which is the mark of true character training and the sure guarantee of a country's welfare."

• • • • •

Second: The development of moral and spiritual values through all the activities and lessons of the school day and particularly by the good example of the school staff. For instance, sports and games may be used to build a sense of fair play, a willingness to lose a game rather than cheat, a desire to do to others as you would be done by and of striving to build a healthy mind and body. The study of science will develop honest dealing with facts, an open mind for new ideas and a keen alertness for the views and experiences of others, respect for truth and humility as one contemplates the vastness of space, the minuteness of the atom and the reign of law and order in the Universe. Biography will keep before pupils inspired examples of character, and encourage them with "the habitual vision of greatness." Friendship among pupils of interracial groups will constitute a strong bulwark against prejudice and intolerance.

Thus our children, inspired by the example of their ancestors, guided by the faith and love of their parents and encouraged by their spiritually sensitive teachers, will renew in their daily lives America's Moral and Spiritual Heritage:

LIBERTY UNDER GOD • RESPECT FOR THE DIGNITY & RIGHTS OF EACH INDIVIDUAL • DEVOTION TO FREEDOM

APPENDIX C

At a Special Term Part II of the Supreme Court held in and for the County of Nassau, at the Court House in Mineola, New York, on the 23rd day of October, 1961 at 33 Willis Ave., Mineola, N. Y.

PRESENT:

HON. MARIO PITTONI,

Justice.

#1824/1959

In the Matter of the Application of

STEVEN I. ENGEL, DANIEL LICHTENSTEIN, MONROE LERNER, LENORE LYONS and LAWRENCE ROTH,

Petitioners-Appellants,

—against—

WILLIAM J. VITALE, JR., PHILIP J. FREED, MARY HARTE, ANNE BIRCH and RICHARD SAUNDERS, constituting the Board of Education of Union Free School District Number Nine, New Hyde Park, New York,

Respondents-Respondents,

directing them to discontinue a certain school practice

and

HENRY HOLLENBERG, ROSE LEVINE, MARTIN ABRAMS, HELEN SWANSON, WALTER F. GIBB, JANE EHLEN, RALPH B. WEBB, VIRGINIA ZIMMERMAN, VIRGINIA DAVIS, VIOLET S. COX, EVELYN KOSTER, IRENE O'ROURKE, ROSMARIE PETELENZ, DANIEL J. REEHIL, THOMAS DELANEY and EDWARD L. MACFARLANE,

Intervenor-Respondents-Respondents.

The above named Petitioners-Appellants, having appealed to the Court of Appeals from the final order of the Supreme Court of the State of New York, County of Nassau, entered in the Office of the Clerk of the County of Nassau on the 17th day of March, 1961; and from an interlocutory order of the Appellate Division of the Supreme Court, Second Department, entered in the office of the Clerk of that court on October 17, 1960, affirming the interlocutory order herein of the Supreme Court, County of Nassau, entered in the Office of the Clerk of the County of Nassau on October 5, 1959; and the Court of Appeals having heard said appeal and ordered and adjudged that the order so appealed from be affirmed without costs, and the remittitur of the Court of Appeals having been duly filed in the Office of the Clerk of the County of Nassau on the 19th day of July, 1961;

Now on reading and filing the remittitur from the said Court of Appeals herein, and on motion of Gunn, Neier & Daiker, attorneys for the Respondents herein, it is

ORDERED AND ADJUDGED, that the order and judgment of said Court of Appeals be and the same hereby is made the order and judgment of this Court, without costs.

ENTER,

MARIO PITTONI
J.S.C.

Granted: October 23, 1961 Entered: October 23, 1961
FRANCIS J. ANDERSON
County Clerk of Nassau County

APPENDIX D

The State Constitutions or Preambles thereto of 49 States of the United States acknowledge that the rights and liberties of the people issue from God and express gratefulness therefor.

Alabama (Adopted in 1901)

We, the people of the State of Alabama, in order to establish justice, insure domestic tranquility and secure the blessings of liberty to ourselves and our posterity, invoking the favor and guidance of Almighty God, do ordain and establish the following Constitution and form of government for the State of Alabama. 1 Ala. Code 3 (1960).

Alaska (Adopted April 24, 1956)

We the people of Alaska, grateful to God and to those who founded our nation and pioneered this great land, in order to secure and transmit to succeeding generations our heritage of political, civil, and religious liberty within the Union of States, do ordain and establish this Constitution for the State of Alaska. Session Laws of Alaska 4 (1959).

Arizona (Adopted in 1912)

We, the people of the State of Arizona, grateful to Almighty God for our liberties, do ordain this Constitution. 1 Ariz. Rev. Stat. 192 (1956).

Arkansas (Adopted in 1874)

We, the people of the State of Arkansas, grateful to Almighty God for the privilege of choosing our own form of government, for our civil and religious liberty, and desiring to perpetuate its blessings and secure the same to ourselves and posterity, do ordain and establish this Constitution. 1 Ark. Stat. 23 (1947).

California (Adopted in 1879)

We, the people of the State of California, grateful to Almighty God for our freedom, in order to secure and perpetuate its blessings, do establish this Constitution. Calif. Const. 1 (Mason 1953).

Colorado (Adopted in 1876)

We, the people of Colorado, with profound reverence for the Supreme Ruler of the Universe, in order to form a more independent and perfect government; establish justice; insure tranquillity; provide for the common defense; promote the general welfare and secure the blessings of liberty to ourselves and our posterity; do ordain and establish this Constitution for the "State of Colorado". 1 Colo. Rev. Stat. 245 (1953).

Connecticut (Adopted in 1818)

The People of Connecticut acknowledging with gratitude, the good providence of God, in having permitted them to enjoy a free government; do, in order more effectually to define, secure, and perpetuate the liberties, rights and privileges which they have derived from their ancestors; hereby, after a careful consideration and revision, ordain and establish the following constitution and form of civil government. 1 Conn. Gen. Stat. 32 (1958).

Delaware (Adopted in 1897)

Through Divine goodness, all men have by nature the rights of worshiping and serving their Creator according to the dictates of their consciences, of enjoying and defending life and liberty, of acquiring and protecting reputation and property, and in general of obtaining objects suitable to their condition, without injury by one to another; and as these rights are essential to their welfare, for due exercise thereof, power is inherent in them; and therefore

all just authority in the institutions of political society is derived from the people, and established with their consent, to advance their happiness; and they may for this end, as circumstances require, from time to time, alter their Constitution of government. 1 Del. Code Ann. 147 (1953).

Florida (Adopted in 1885)

We, the people of the State of Florida, grateful to Almighty God for our constitutional liberty, in order to secure its blessings and to form a more perfect government, insureing domestic tranquillity, maintaining public order and guaranteeing equal civil and political rights to all, do ordain and establish this constitution. 3 Fla. Stat. 3379 (1959).

Georgia (Adopted in 1887)

To perpetuate the principles of free government, insure justice to all, preserve peace, promote the interest and happiness of the citizen, and transmit to posterity the enjoyment of liberty, we, the people of Georgia, relying upon the protection and guidance of Almighty God, do ordain and establish this Constitution. 2 Ga. Code Ann. 221 (1948).

Hawaii (Adopted in 1959)

We, the people of the State of Hawaii, grateful for Divine Guidance, and mindful of our Hawaiian heritage, reaffirm our belief in a government of the people, by the people and for the people, and with an understanding heart toward all the peoples of the earth, do hereby ordain and establish this Constitution for the State of Hawaii. Session Laws of Hawaii 85 (1959).

Idaho (Adopted in 1890)

We, the people of the State of Idaho, grateful to Almighty God for our freedom, to secure its blessings and promote our common welfare do establish this Constitution. 1 Idaho Code 43 (1949).

Illinois (Adopted in 1870)

We, the people of the state of Illinois—grateful to Almighty God for the civil, political and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations—in order to form a more perfect government, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessing of liberty to ourselves and our posterity, do ordain and establish this constitution for the state of Illinois. Ill. Ann. Stat., Const. 158 (1936).

Indiana (Adopted in 1851)

To the end, that justice be established, public order maintained, and liberty perpetuated: We, the People of the State of Indiana, grateful to Almighty God for the free exercise of the right to choose our own form of government, do ordain this Constitution. 1 Ind. Stat. Ann. 1 (1955).

Iowa (Adopted in 1857)

We, the People of the State of Iowa, grateful to the Supreme Being for the blessings hitherto enjoyed, and feeling our dependence on Him for a continuation of those blessings, do ordain and establish a free and independent government, by the name of the State of Iowa, the boundaries whereof shall be as follows: 1 Iowa Code lxxi (1958).

Kansas (Adopted in 1859)

We, the people of Kansas, grateful to Almighty God for our civil and religious privileges, in order to insure the full enjoyment of our rights as American citizens, do ordain and establish this Constitution of the state of Kansas, with the following boundaries. . . . Kan. Gen. Stat. xxxviii (1949).

Kentucky (Adopted in 1891)

We, the people of the Commonwealth of Kentucky, grateful to Almighty God for the civil, political and religious liberties we enjoy, and invoking the continuance of these blessings, do ordain and establish this Constitution. Ky. Rev. Stat. 1 (1955).

Louisiana (Adopted in 1921)

We, the people of the State of Louisiana, grateful to Almighty God for the civil, political and religious liberties we enjoy, and desiring to secure the continuance of these blessings, do ordain and establish this Constitution. 1 La. Stat. Ann. 5 (West 1954).

Maine (Adopted in 1820 and 1876)

We the people of Maine, in order to establish justice, insure tranquillity, provide for our mutual defence, promote our common welfare, and secure to ourselves and our posterity the blessings of liberty, acknowledging with grateful hearts the goodness of the Sovereign Ruler of the Universe in affording us an opportunity, so favorable to the design; and, imploring His aid and direction in its accomplishment, do agree to form ourselves into a free and independent State, by the style and title of the STATE OF MAINE, and do ordain and establish the following Constitution for the government of the same. 1 Me. Rev. Stat. xxxi (1954).

Maryland (Adopted in 1867)

We, the People of the State of Maryland, grateful to Almighty God for our civil and religious liberty, and taking into our serious consideration for best means of establishing a good Constitution in this State for the sure foundation and more permanent security thereof, declare: 9 Md. Code Ann. 20 (1957).

Massachusetts (Adopted in 1790)

We, therefore, the people of Massachusetts, acknowledging, with grateful hearts, the goodness of the great Legislator of the universe, in affording us, in the course of His providence, an opportunity, deliberately and peaceably, without fraud, violence or surprise, of entering into an original, explicit, and solemn compact with each other; and for forming a new constitution of civil government, for ourselves and posterity; and devoutly imploring His direction in so interesting a design, do agree upon, ordain, and establish the following Declaration of Rights, and Frame of Government, as the CONSTITUTION OF THE COMMONWEALTH OF MASSACHUSETTS. 10 Mass. Ann. Laws 5 (1951).

Michigan (Adopted in 1909)

We, the people of the State of Michigan, grateful to Almighty God for the blessings of freedom, and earnestly desiring to secure these blessings undiminished to ourselves and our posterity, do ordain and establish the Constitution. 1 Mich. Stat. Ann. 203 (1936).

Minnesota (Adopted in 1857)

We, the people of the State of Minnesota, grateful to God for our civil and religious liberty and desiring to perpetuate its blessings and secure the same to ourselves and our posterity, do ordain and establish this Constitution. 1 Minn. Stat. 31 (1953).

Mississippi (Adopted in 1890)

We, the people of Mississippi in convention assembled, grateful to Almighty God, and invoking his blessing on our work, do ordain and establish this constitution. 1 Miss. Code Ann. 133 (Recomp. 1956).

Missouri (Adopted in 1945)

We, the people of Missouri, with profound reverence for the Supreme Ruler of the Universe, and grateful for His goodness, do establish this constitution for the better government of the state. Mo. Rev. Stat. 41 (1949).

Montana (Adopted in 1889)

We, the people of Montana, grateful to Almighty God for the blessings of liberty, in order to secure the advantages of a state government, do, in accordance with the provisions of the enabling act of congress, approved the twenty-second of February, A. D. 1889, ordain and establish this constitution. 1 Mont. Rev. Code 83 (1947).

Nebraska (Adopted in 1875)

We, the people, grateful to Almighty God for our freedom, do ordain and establish the following declaration of rights and frame of government, as the Constitution of the State of Nebraska. Neb. Laws, 71st Session 11 (1960).

Nevada (Adopted in 1864)

We the people of the State of Nevada Grateful to Almighty God for our freedom in order to secure its blessings, insure domestic tranquillity, and form a more perfect Government, do establish this CONSTITUTION. 5 Nev. Rev. Stat. (1960).

New Hampshire, Articles 4th and 5th (Adopted in 1784)

Every individual has a natural and unalienable right to worship God according to the dictates of his own conscience, and reason . . . morality and piety, rightly grounded on evangelical principles, will give the best and greatest security to government, and will lay, in the hearts of men, the strongest obligations to due subjection; and as the knowl-

edge of these is most likely to be propagated through society by the institution of the public worship of the Deity . . . N. H. Rev. Stat. 49-50 (1955).

New Jersey (Adopted in 1947)

We, the people of the State of New Jersey, grateful to Almighty God for the civil and religious liberty which He has so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations, do ordain and establish this Constitution. N. J. S. A. Constitution 2 (1954).

New Mexico (Adopted in 1911)

We, the people of New Mexico, grateful to Almighty God for the blessings of liberty, in order to secure the advantages of a state government, do ordain and establish this Constitution. 1 N. M. Stat. 59 (1953).

New York (Adopted in 1895)

We, the people of the State of New York, grateful to Almighty God for our Freedom, in order to secure its blessings, do establish this Constitution. N. Y. Const., Part I, p. 177 (McKinney 1954).

North Carolina (Adopted in 1876)

We, the people of the State of North Carolina, grateful to Almighty God, and the Sovereign ruler of nations, for the preservation of the American Union and the existence of our civil, political and religious liberties, and acknowledging our dependence upon Him for the continuance of those blessings to us and our posterity, do, for the more certain security thereof, and for the better government of this State, ordain and establish this Constitution. 4A N. C. Gen. Stat. 5 (1955).

North Dakota (Adopted in 1889)

We, the people of North Dakota, grateful to Almighty God for the blessings of civil and religious liberty, do ordain and establish this constitution. 13 N. D. Code Ann. 101 (1960).

Ohio (Adopted in 1851)

We, the people of the State of Ohio, grateful to Almighty God for our freedom, to secure its blessings and promote our common welfare, do establish this Constitution. Ohio Rev. Code Ann., Appendix 345 (Page 1955).

Oklahoma (Adopted in 1907)

Invoking the guidance of Almighty God in order to secure and perpetuate the blessing of liberty; to secure just and rightful government; to promote our mutual welfare and happiness, we the people of the State of Oklahoma, do ordain and establish this Constitution. 1 Okla. Stat. '43 (1951).

Oregon (Adopted in 1859)

All men shall be secured in the Natural right, to worship Almighty God according to the dictates of their own consciences. Ore. Const., art. I, §2.

Pennsylvania (Adopted in 1874)

We, the people of the Commonwealth of Pennsylvania, grateful to Almighty God for the blessings of civil and religious liberty, and humbly invoking His guidance, do ordain and establish this Constitution. Penna. Const. 95 (Purdon 1930).

Rhode Island (Adopted in 1843)

We, the people of the state of Rhode Island and Providence Plantations, grateful to Almighty God for the civil

and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and to transmit the same unimpaired to succeeding generations do ordain and establish this Constitution of government. 1 R. I. Gen. Laws 137 (1956).

South Carolina (Adopted in 1895)

We, the people of the State of South Carolina, in Convention assembled, grateful to God for our liberties, do ordain and establish this Constitution for the preservation and perpetuation of the same. 7 S. C. Code 81 (1952).

South Dakota (Adopted in 1889)

We, the people of South Dakota, grateful to Almighty God for our civil and religious liberties, in order to form a more perfect and independent government, establish justice, insure tranquillity, provide for the common defense, promote the general welfare and preserve to ourselves and to our posterity the blessings of liberty, do ordain and establish this constitution for the state of South Dakota. 2 S. D. Code 51 (1939).

Tennessee (Adopted in 1870)

That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no man can of right, be compelled to attend, erect or support any place of worship, or to maintain any minister against his consent; that no human authority can, in any case whatever, control or interfere with the rights of conscience; and that no preference shall ever be given, by law, to any religious establishment or mode of worship. Tenn. Const., art. I, §3.

Texas (Adopted in 1876)

Humbly invoking the blessings of Almighty God, the people of the State of Texas, do ordain and establish this Constitution. 1 Texas Const. 2 (Vernon 1955).

Utah (Adopted in 1895)

Grateful to Almighty God for life and liberty, we, the people of Utah, in order to secure and perpetuate the principles of free government, do ordain and establish this CONSTITUTION. 1 Utah Code Ann. 138 (1953).

Vermont (Adopted in 1793)

That all men have a natural and unalienable right, to worship Almighty God, according to the dictates of their own consciences and understandings, as in their opinion shall be regulated by the word of God; and that no man ought to, or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any minister, contrary to the dictates of his conscience, nor can any man be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiments, or peculiar mode of religious worship; and that no authority can, or ought to be vested in, or assumed by, any power whatever, that shall in any case interfere with, or in any manner control the rights of conscience, in the free exercise of religious worship. Nevertheless, every sect or denomination of christians ought to observe the sabbath or Lord's day, and keep up some sort of religious worship, which to them shall seem most agreeable to the revealed will of God. Vermont Const., ch. I, art. 3.

Virginia (Adopted in 1902)

That religion or the duty which we owe to our creator, and the manner of discharging it, can be directed only by

reason and conviction, not by force or violence and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience and that it is the mutual duty of all to practice Christian forbearance, love and charity towards each other. Va. Const., art. I, §16.

Washington (Adopted in 1889)

We, the people of the State of Washington, grateful to the Supreme Ruler of the Universe for our liberties, do ordain this constitution. Vol. 0 Wash. Rev. Code 43 (1956).

Wisconsin (Adopted in 1848)

We, the people of Wisconsin, grateful to Almighty God for our freedom, in order to secure its blessings, form a more perfect government, insure domestic tranquillity and promote the general welfare, do establish this constitution. 1 Wis. Stat. 28 (1957).

Wyoming (Adopted in 1890)

We, the people of the State of Wyoming, grateful to God for our civil, political and religious liberties, and desiring to secure them to ourselves and perpetuate them to our posterity, do ordain and establish this Constitution. 1 Wyo. Stat. 51 (1957).

APPENDIX E

HOUSE OF REPRESENTATIVES

83D CONGRESS
2d Session

REPORT
No. 1693

AMENDING THE PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES

MAY 28, 1954.—Referred to the House Calendar and ordered to be printed

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Mr. JONAS of Illinois, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. J. Res. 243]

The Committee on the Judiciary, to whom was referred the joint resolution (H. J. Res. 243) to amend the pledge of allegiance to the flag of the United States of America, having considered the same, report favorably thereon with an amendment and recommend that the joint resolution, as amended, do pass.

The Amendment is as follows:

Page 2, line 1, strike out the comma after the words "one Nation".

PURPOSE

The act of June 22, 1942 (ch. 435, 56 Stat. 1074), as amended, relates to rules and customs pertaining to the display and use of the flag of the United States of America. Section 7 of that act contains the pledge of allegiance to the flag; and it is the purpose of this proposed legislation to amend that pledge by adding the words "under God" so as to make it read, in appropriate part, "one Nation under God, indivisible,".

STATEMENT

Since the introduction of this legislation the committee and a great number of the individual Members of Congress have received communications from all over the United States urging the enactment of this measure.

At this moment of our history the principles underlying our American Government and the American way of life are under attack by a system whose philosophy is at direct odds with our own. Our American Government is founded on the concept of the individuality and the dignity of the human being. Underlying this concept is the belief that the human person is important because he was created by God and endowed by Him with certain inalienable rights which no civil authority may usurp. The inclusion of God in our pledge therefore would further acknowledge the dependence of our people and our Government upon the moral directions of the Creator. At the same time it would serve to deny the atheistic and materialistic concepts of communism with its attendant subservience of the individual.

The Supreme Court ruled in 1892 that "this is a religious nation."[1] It reiterated this holding, more recently (1951), when it stated:

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[1] *Church of the Holy Trinity* v. *U. S.* (1892) (143 U. S. 457, 470).

> We are a religious people whose institutions presuppose a supreme being.[2]

Those words by our Supreme Court are true in a very fundamental and realistic sense. From the time of our earliest history our peoples and our institutions have reflected the traditional concept that our Nation was founded on a fundamental belief in God. For example our colonial forebears recognized the inherent truth that any government must look to God to survive and prosper. In the year 1620, the Mayflower compact, a document which contained the first constitution in America for complete self-government, declared in the opening sentence "In the name of God. Amen." This was an open recognition, by our forebears, of the need for the official conjunction of the laws of God with the laws of the land.

It was William Penn who said: "Those people who are not governed by God will be ruled by tyrants."

Four years before the Declaration of Independence, we find George Mason arguing to the General Court of Virginia that—

> All acts of legislature apparently contrary to the natural right and justice are, in our laws, and must be in the nature of things considered as void. The laws of nature are the laws of God, whose authority can be superseded by no power on earth.

On July 4, 1776, our Founding Fathers proclaimed our Declaration of Independence which no less than four times refers to the existence of the Creator. It states in part:

> When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another and to assume among the powers of the earth, the separate and equal

[2] *Zorach* v. *Clauson* (1951) (343 U. S. 306, 313).

> station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.
>
> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.

This same document appeals to "the Supreme Judge of the world that this Nation be free," and pledges our Nation to support the Declaration "with a firm reliance on the protection of divine Providence."

During the Presidency of Abraham Lincoln, the Congress passed the act of April 22, 1864, directing that the inscription "In God we trust" be placed on our coins. This avowal of faith has been imprinted on billions and billions of coins during the last 90 years.

Later at Gettysburg on November 19, 1863, Lincoln said:

> That we here highly resolve that these dead shall not have died in vain; that this Nation, under God, shall have a new birth of freedom, and that government of the people, by the people, for the people shall not perish from the earth:

Recently President Eisenhower joined with Bishop Fulton J. Sheen, Dr. Norman Vincent Peale, Rabbi Norman Salit, and the American Legion Commander, Arthur J. Connell, in the American Legion's Back to God appeal in connection with its Four Chaplains' Day, commemorating the four military chaplains who heroically gave their lives when the troopship *Dorchester* was sunk in 1943. The President declared that "all the history of America" bears witness to the truth that "in time of test or trial we instinctively turn to God." "Today, as then (Gettysburg), there is need for positive acts of renewed recognition that faith is our surest * * * strength, our greatest resource."

Representative Louis C. Rabaut who testified at the hearing before the subcommittee aptly stated the need for this legislation in the following words:

> By the addition of the phrase "under God" to the pledge, the consciousness of the American people will be more altered to the true meaning of our country and its form of government. In this full awareness we will, I believe, be strengthened for the conflict now facing us and more determined to preserve our precious heritage.
>
> More importantly, the children of our land, in the daily recitation of the pledge in school, will be daily impressed with a true understanding of our way of life and its origins. As they grow and advance in this understanding, they will assume the responsibilities of self-government equipped to carry on the traditions that have been given to us. Fortify our youth in their allegiance to the flag by their dedication to "one Nation, under God."

Since our flag is symbolic of our Nation, its constitutional government and the morality of our people, the committee believes it most appropriate that the concept of God be included in the recitations of the pledge of allegiance to the flag. It should be pointed out that the adoption of this legislation in no way runs contrary to the provisions of the first amendment to the Constitution. This is not an act establishing a religion or one interfering with the "free exercise" of religion. A distinction must be made between the existence of a religion as an institution and a belief in the sovereignty of God. The phrase "under God" recognizes only the guidance of God in our national affairs. The Supreme Court has clearly indicated that the references to the Almighty which run through our laws, our public rituals, and our ceremonies in no way flout the provisions of the first amendment (*Zorach* v. *Clauson* (343 U. S. 306, 312-313)). In so construing the first amendment, the Court

pointed out that, if this recognition of the Almighty was not so, then even a fastidious atheist or agnostic could object to the way in which the Court itself opens each of its sessions, namely, "God save the United States and this Honorable Court" (id., 313).

Included as a part of this report is an opinion from the Legislative Reference Service of the Library of Congress, concerning the proper placement of the words "under God" in the pledge of allegiance.

MAY 11, 1954.

To: Mr. Cyril F. Brickfield [Assistant Counsel], House Committee on the Judiciary.

Subject: Placing of the words "under God" in the pledge of allegiance.

The pledge of allegiance to the flag was recognized and codified by Congress in the Flag Code of 1942 (act of June 22, 1942, amended December 22, 1942, U. S. C. 36:172). The pledge law now reads: "I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one Nation indivisible, with liberty and justice for all."

Currently, several proposals are pending, to insert in this pledge the words "under God." These present several alternatives as to placement and punctuation:

(1) • • • Republic for which it stands, one Nation, under God, indivisible, with liberty • • •

(2) • • • Republic for which it stands, one Nation under God, indivisible, with liberty • • •

(3) • • • Republic for which it stands, one Nation indivisible under God, with liberty • • •

You have asked for a brief memorandum on the question of placement and punctuation, and whether the rules of grammar point to one form rather than another. The present statement is limited to this narrow point. Of course, before any judgment can be expressed, the fundamental question must be met—

what is the exact meaning intended by the proposed insertion? On this point, we have some remarks in the Congressional Record as a guide.

Representative Rabaut, who introduced Joint Resolution 243, explained his measure in the Congressional Record of February 12, 1954, page A-1115. "Unless we are willing to affirm our belief in the existence of God and His creator-creature relationship to man, we drop man himself to the significance of a grain of sand. * * * Children and Americans of all ages must know that this is one Nation which "under God" means "liberty and justice for all."

Senator Ferguson, who introduced Senate Joint Resolution 126, commented that "Our Nation was founded on a fundamental belief in God * * * communism, on the contrary, rejects the very existence of God." (See Congressional Record, April 1, 1954, p. A-2527.)

It seems likely, then, that the insertion is intended as a general affirmance of the proposition that the United States of America is "founded on a fundamental belief in God." The new language should therefore be inserted, and punctuated, so as most clearly to indicate this general thought. Under the generally accepted rules of grammar, a modifier should normally be placed as close as possible to the word it modifies. In the present instance, this would indicate that the phrase "under God," being intended as a fundamental and basic characterization of our Nation, might well be put immediately following the word "Nation." Further, since the basic idea is a Nation founded on a belief in God, there would seem to be no reason for a comma after Nation; "one Nation under God" thus becomes a single phrase, emphasizing precisely the idea desired by the authors noted above.

This reading, it will be noted, substitutes the basic concept of "one Nation under God" for the phrase now in law, "one Nation indivisible"; and "indivisible" becomes a separate prime modifier.

In the alternative reading, "one Nation indivisible under God," the phrase "under God" would by the

normal rules of grammar be read as modifying "indivisible," rather than "Nation." By the same reasoning, in the reading "one Nation under God indivisible," indivisible would naturally be construed as modifying the word "God."

It may be noted in passing that as the expression is used in Lincoln's Gettysburg Address [that this Nation, under God, shall have a new birth of freedom * * *] the phrase "under God" seems to mean "with the help of God." Lincoln was solemnly asking his people to resolve that the Nation, with God's help, should have a new birth of freedom. The difference in context seems adequate reason for the punctuation as given.

W. C. GILBERT, *Assistant Director.*

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the House of Representatives there is printed below in roman type without brackets existing law in which no change is proposed by enactment of this bill: New provisions proposed to be inserted are shown in italic.

TITLE 28, UNITED STATES CODE

§ 172. PLEDGE OF ALLEGIANCE TO THE FLAG; MANNER OF DELIVERY

The following is designated as the pledge of allegiance to the flag: "I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one Nation *under God,* indivisible, with liberty and justice for all." Such pledge should be rendered by standing with the right hand over the heart. However, civilians will always show full respect to the flag when the pledge is given by merely standing at attention, men removing the headdress. Persons in uniform shall render the military salute.